IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

Crl.MC.No. 2417 of 2007()

C.C. 1920/04 OF J.F.C.M. COURT-II, KOCHI

PETITIONER: ACCUSED 1 & 2

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1. NASEER, AGED 27 YEARS, S/O.HUSSAIN,
   C.C.NO.XXII/998, PONNUMTHARA (H),
   THANGAL NAGAR, PALLURUTHY, EDAKOCHI VILLAGE.

2. NASEEMA, AGED 45 YEARS, W/O.HUSSAIN,
   C.C.NO.XXII/998, PONNUMTHARA (H),
   THANGAL NAGAR, PALLURUTHY, EDAKOCHI VILLAGE.

BY ADV. SRI.PEEYUS A.KOTTAM

RESPONDENTS: STATE & DEFACTO COMPLAINANT

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1. STATE OF KERALA,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

2. FOUSYA, AGED 23 YEARS, W/O.NASEER,
   D/O.MOHAMMEDALI, KUDAPPILLYPARAMBIL (H),
   THANGAL NAGAR, PALLURUTHY, EDAKOCHI VILLAGE.

R2 BY ADV. SRI.NAVEEN THOMAS
R1 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 2417 of 2007

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Dated this the 30th day of July, 2007

O R D E R

The petitioners face indictment in a prosecution under Section 498A I.P.C. Cognizance has been taken on the basis of a complaint filed by the second respondent/defacto complainant. The first petitioner is the husband and second petitioner is the mother-in-law of the defacto complainant. Final report has been filed. The matter is pending before the learned Magistrate as C.C.1920 of 2004. Pending the proceedings, it is submitted, that the petitioners have settled their disputes with the defacto complainant. The defacto complainant has compounded the offences allegedly committed by the petitioners. The first petitioner and the second respondent had resumed cohabitation. The second respondent is now pregnant also, it is submitted.

2. The second respondent has entered appearance through counsel and the parties have filed a joint statement duly counter signed by their counsel to satisfy the court that the matter has been settled and the second respondent has compounded the offences allegedly committed by the petitioners.

3. I am satisfied from the submissions made at the Bar, from the averments in the Crl.M.C. and from the joint statement filed that the parties have settled their disputes and the defacto complainant has compounded the offences allegedly committed by the petitioners. If legally permissible, I am satisfied that the composition can be accepted and proceedings can be brought to premature termination.

4. The offence under Section 498A I.P.C. is not legally compoundable and the composition cannot be accepted under Section 320 Cr.P.C. But the learned counsel for the petitioners relies on the decision in **B.S. Joshi** v. **State of Haryana** (AIR 2003 SC 1386). The said decision is authority for the proposition that at times the interests of justice may transcend the interests of mere law and in such circumstances the provisions of Section 320 Cr.P.C. cannot be reckoned as a fetter on the sweeping powers of the Court under Section 482 Cr.P.C. to act in aid of justice. I am satisfied that this is an eminently fit case where the powers under Section 482 Cr.P.C. with the help of the dictum in **B.S. Joshi** can be invoked and the proceedings against the petitioners brought to premature termination.

5. This Crl.M.C. is hence allowed. C.C. No. 1920 of 2004, pending before the Judicial First Class Magistrate-II, Kochi against the petitioners is hereby quashed.

(R. BASANT)
Judge

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